IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 78792

CITY OF LAS VEGAS, a political subdivision of the State of Nevada,

Petitioner

v.

EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark, and the Honorable Timothy C. Williams, District Judge,

Respondents

and

180 LAND CO., LLC, a Nevada limited liability company et al.,

Real Parties in Interest

District Court Case No. A-17-758528-J
Eighth Judicial District Court of Nevada

OPPOSITION TO PETITION FOR REHEARING

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed:

180 Land Co., LLC, Fore Star Ltd., and Seventy Acres, LLC are the Real Parties in Interest. The Law Offices of Kermitt L. Waters, Hutchison & Steffen, PLLC and Kaempfer Crowell partners and associates have appeared for the real parties in interest in the case and/or are expected to appear in this Court. These representatives are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

DATED this 17th day of July, 2019

By: */s/ Kermitt Waters*

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INTRODUCTION AND ISSUE

The City's Petition For Rehearing presents one issue: whether the City can preclude all use of a vacant 35 Acre Property, which has been hard zoned for residential development for over 30 years, and not pay just compensation on the grounds that zoning law gives the City "discretion" to deny land use applications. This Opposition sets forth the facts related to the 35 Acre Property and shows why the City's Petition must be denied.

THE LANDOWNER PROPERLY PLED A PROPERTY RIGHT

This Court has held that a landowner in an inverse condemnation proceeding need only allege an ownership interest in the land at issue to support a taking claim and defeat a motion to dismiss. ASAP Storage, Inc. v. City of Sparks, 123 Nev. 639, 645 (2007); McCarran v. Sisolak, 122 Nev. 645, 658 (2006). Here, after significant briefing and several hours of oral argument, the Honorable Timothy Williams held the Real Party in Interest, 180 Land, LLC ("Landowner"), properly pled AND provided documents sufficient to establish a property interest in the 35 Acre Property sufficient to support a taking claim and defeat the City's motion for judgment on the pleadings. *(5 PA0882-885).* This Panel affirmed, holding Judge Williams "noted that real party in interest asserted []a property interest,...and pointed to alleged facts indicating that exhaustion was met or futile." *Order Denying Pet. for Writ*, p. 2.

These decisions by Judge Williams and this Panel are correct as the pleadings AND detailed documents (*1 OMS 004-009*)[1] show the City, itself, over the past 32 years repeatedly acknowledged the Landowner's property interest in the 35 Acre Property as follows: **1)** City letters in 1986 and 1996 identify the 35 Acre Property as hard zoned R-PD7 (*6 OMS 1268-1273*); **2)** a publicly noticed and passed City Ordinance in 2001 designates the 35 Acre Property R-PD7 (*2 OMS 318-399*); **3)** a 2014 Zoning Verification Letter issued by the City stating the 35 Acre Property is "zoned R-PD7 (Residential Planned Development District – 7 units per acre)…. The density allowed in the R-PD District shall be reflected by a numerical designation [-] (Example, R-PD4 allows up to four units per gross acre.) (*2 OMS 400*);" and, **4)** the City Planning Director, City Planning Staff, and the City Attorney Brad Jerbic stated in 2016 and 2018 that the 35 Acre Property is hard zoned R-PD7, which "allows up to 7.49 units per acre." *(2-3 OMS 401-670; 3 OMS 657:7473-7481; 4 OMS 799-872; 4 OMS 839:1160-1161*, *1165-1166)*. The Peccole Ranch Concept Plan prepared in 1990 ("Peccole Concept Plan") and which the City touts to this Court (Pet. 1, 11) also designates the 35 Acre Property for a "residential use." (*6 OMS 1290)*. The County Tax Assessor even placed a "residential" value of about $88 million on the 250 Acre

[1] The Landowner provided Judge Williams with documents supporting his property interest, meaning the City's argument that a property right cannot be established by a mere allegation in a complaint is inapplicable. Pet. 6-7.

Residential Land and is taxing the Landowner accordingly. *(5 OMS 1126-1141)*. It is simply indisputable that the Landowner has a property interest in the 35 Acre Property.

THE LANDOWNER PROPERLY PLED A TAKING.

Judge Williams also held that the taking claims involve a complex factual assessment that does not lend itself to summary dismissal, holding there are "nearly infinite variety of ways in which government actions or regulations can effect property interests, there is "no magic formula" for determining when each government interference amounts to a taking, and a taking analysis requires a "complex factual assessment" wherein all of the government action "in the aggregate" must be analyzed. *see* City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999); St. v. 8th Jud. Dist. Ct., 351 P.3d (Nev. 2015 (*citing* Ark. Game & Fish Comm's v. U.S., 568 U.S. — (2012); Merkur v. City of Detroit, 680 N.W.2d 485, 496 (Mich.Ct.App.2004)*(5 PA0882)*. Judge Williams then recognized a taking occurs when government action renders property valueless or unusable. Id.

Judge Williams held the Landowner properly pled facts AND provided documents sufficient to support a taking, which include the following (*5 PA0881-882*): **1)** the City denied applications to develop the 35 Acre Property as a stand alone parcel, even though the applications complied with the R-PD7 hard zoning, NRS, and

the City's own Code (Title 19), and the City's own Planning Staff recommended approval - the City asserted that it would only approve development of the 35 Acre Property as part of a Master Development Agreement ("MDA") encompassing 250 acres ("250 Acre Residential Zoned Land")(*4 OMS 875-892 and 893-919; 4 OMS 692:566 - 693:587)*; **2)** the Landowner then submitted an MDA to develop the 35 Acre Property as part of 250 Acre Residential Zoned Land and the City denied the MDA, even though City Planning Staff recommended approval as the MDA was drafted almost entirely by the City, the MDA met all City mandates and included the major modification procedures and standards, and the Landowner agreed to sweeping concessions in the MDA *(4 OMS 679, 688, 692; 6 OMS 1291 and 1292; 5 OMS 928, 929, 942, 1074, 1264:2354-2356)*; **3)** the City then adopted two bills that solely target the Landowner's 250 Acre Residential Zoned Land (which includes the 35 Acre Property) to preclude development and preserve the property for public use, causing one councilperson to exclaim: "[t]his bill is for one development and one development only. The bill is only about Badlands Golf Course [250 Acre Residential Zoned Land]. . . . "**I call it the Yohan Lowie [a principle of the Landowner] Bill**." *(5 OMS 1143:57-58 and 5 OMS 1158:487)*; **4)** the City denied the Landowner access to the 35 Acre Property, even though Nevada law provides denial of access is a taking (*6 OMS 1294*); **5)** the City denied even a minimal request to

install a fence (*6 OMS 1293*); **6)** the City refused an application for a drainage study, claiming the Landowner must first obtain entitlements, but the new City bills will not provide entitlements until a drainage study is received; **7)** the City refused an application to develop the Landowner's adjoining 133 Acre Property, even though the City's own Planning Staff recommended approval (*5 OMS 1163-1176*); **8)** one City councilman stated that it would be "**over his dead body**" before the Landowner could use his property, with another stating "I am voting against the whole thing" (*4 OMS 873-874 and 5 OMS 1181*); and, **9)** City documents show the City wants the Landowner's entire 250 Acre Residential Zoned Land for a "City park," but only wants to pay $15 million (which the City has not denied), even though the tax assessor values the property at over $88 million *(5 OMS 1125). See 5 PA0886-893*.

Therefore, the Landowner properly plead AND provided documents: 1) proving his property interest; and 2) establishing a taking. *(2 PA0273 - PA0361).* Therefore, the City's Petition is baseless and should be denied.

THE CITY'S "DISCRETION" ARGUMENT IS MISPLACED.

The City's Petition does not deny the taking, but, instead, tries to weave zoning law[2] into this inverse condemnation case to argue the Landowner never had a

[2] Stratosphere Gaming Corp. v. City of Las Vegas, 120 Nev. 523 (2004).

property interest to be taken.[3] This City argument is as follows: 1) zoning law gives the government "discretion" to deny land use applications, meaning there is no vested right to have a land use application approved; 2) according to the City, this means no Nevada landowner has the vested right to use their property until such time as the government approves a land use application; and, 3) since Nevada landowners never had an underlying vested right to use their property to begin with, there can never be a taking of property when the government denies all use of that property. In other words, Nevada landowners have no property rights. Pet. 3.

This Court and the United States Supreme Court have explained the balance between zoning and inverse condemnation law, which expressly rejects the City's argument. First, as explained above, this Court has held that, in the context of an inverse condemnation case, all Nevada landowners have a property interest in the vested right to use their property by virtue of their ownership. Sisolak and ASAP Storage, supra; *see also* Schwartz v. State, 111 Nev. 998 (1995). Second, this Court has held that, in the context of an inverse condemnation case, the City may apply "valid zoning and related regulations ***which do not give rise to a taking claim***." Sisolak, at 122 Nev. 660, fn 25. (emphasis supplied). This means that the City can

[3] The City argues this same principle for four additional pages, citing to cases that are not even remotely on point, such as, Landgraf v. USI Film Prod (a sexual harassment case); Application of Filippini (a water appropriations case), and numerous other zoning / non inverse condemnation cases. Pet. 4-6.

properly exercise its discretion and apply "valid zoning and related regulations" to deny land use applications as stated by the City, **however**, if in exercising that discretion, the City's actions "give rise to a taking claim," then it is liable for a taking and must pay just compensation.

The United States Supreme Court affirms this rule, finding the Just Compensation Clause "is designed not to limit the governmental interference with property rights *per se*, but rather to secure *compensation* in the event of otherwise proper interference amounting to a taking." First English Evangelical Lutheran Church of Glendale v. Los Angeles County, Cal., 482 U.S. 304, 315 (1987);[4] *see also* Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922) (recognizing government entities may regulate the use of property through appropriate land use denials, but "if [the] regulation goes too far it will be recognized as a taking." Id., at 415).

The application of this universal inverse condemnation law can be seen in several cases where the property was vacant, unimproved and without entitlements (land use approvals), and the Courts still recognized a property interest and a taking, even though the government properly exercised its "discretion" to deny a land use application or adopted an ordinance to prevent development. In the Sisolak case,

[4] The City's argument that zoning does not create a vested right, because even compatible zoning does not divest the government from denying a land use "based upon considerations of public interest" also misses the point for the same reasons stated herein. Pet. 3.

supra, Mr. Sisolak owned vacant and unentitled land, the County exercised its discretion to apply a valid zoning ordinance that prohibited development into the airspace (a height restriction to protect safe air travel) and this Court still found a vested right to use and taking of the airspace. In the Schwartz case, *supra*, Ms. Schwartz owned vacant and unentitled land without any approved access, the State exercised its discretion to apply a valid regulation that prohibited access to a roadway, and this Court still found a vested right to use and taking of the access. In the Del Monte Dunes case, *infra*, the landowner owned vacant and unentitled land, the City of Monterey exercised its discretion to apply valid regulations that prohibited development of property (to protect an endangered butterfly), and the United States Supreme Court still found a vested right for which compensation must be paid if taken. In the Lucas case,[5] Mr. Lucas owned vacant and unentitled land, the South Carolina Coastal Commission exercised its discretion to apply a regulation that prohibited development of property (the Beachfront Management Act - to protect inland flooding), and the United States Supreme Court held there could still be a vested right for which compensation must be paid if taken.

What each of these decisions recognized and confirmed is that government can exercise its discretion to apply valid zoning regulations and deny land use

[5] Lucas v. S.C. Coastal Council, 505 U.S. 1003 (1992).

applications, but this "discretion" does not erase property rights and, if in exercising this discretion there is a taking of property, just compensation must be paid. If the rule were otherwise, there would be no vested property rights in any vacant and undeveloped property in Nevada, because, according to the City, the local entity has "discretion" to deny all use of the property and not pay just compensation for that denial.

THE CITY'S RIPENESS ARGUMENT IS WITHOUT MERIT.

To fully address the City's ripeness argument, it is important to acknowledge that Judge Williams is hearing two different cases related to the same 35 Acre Property and these cases are governed by different facts, evidentiary and legal standards.

The Petition for Judicial Review ("PJR") Case - In the PJR case, Judge Williams held there was substantial evidence to support the City's June 21, 2017, denial of the Landowner's one 35 Acre Property development application. This PJR ruling is *strictly limited* to the one denial AND the record before the City Council as of and prior to June 21, 2017. Bd. of Cty. Comm'rs v. C.A.G. Inc., 98 Nev. 497, 500 (1982).

The Inverse Condemnation Case - In the inverse condemnation case Judge Williams held the Landowner pled AND provided documents sufficient to defeat the

City's motion for judgment on the pleadings. As explained above, for the inverse case, Judge Williams was not limited to the PJR record, but was required to consider the "aggregate" of the City's actions (listed above) regardless of when they occurred to determine if those actions rise to the level of a taking.[6] As explained above, most of the City's actions in the inverse condemnation action occurred after the June 21, 2017 cutoff date in the PJR case.

Turning to the City's ripeness argument, the ripeness doctrine in an inverse condemnation proceeding involves three principles: 1) the landowner must submit at least one meaningful application so the extent of government interference is known to a reasonable degree of certainty;[7] 2) the government, however, may not impose repetitive and unfair land use decisions to avoid a final decision[8]; and 3) when an

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[6] Merkur v. City of Detroit, 680 N.W.2d 485, 496 (Mich. Ct. App. 2004) ("the form, intensity, and the deliberateness of the government actions toward the property must be examined … All actions by the [government], in the aggregate, must be analyzed."); *see also* St. v. 8th Jud. Dist. Ct., 351 P.3d 736, 741 (Nev. 2015) (*citing* Ark. Game & Fish Comm's v. U.S., 568 U.S. --- (2012)) (there is no "magic formula" in every case for determining whether particular government interference constitutes a taking under the U.S. Constitution; there are "nearly infinite variety of ways in which government actions or regulations can effect property interests.").

[7] Palazzolo v. R.I., 533 U.S. 606, 618 (2001) ("The central question in resolving the ripeness issue, under *Williamson County* and other relevant decisions, is whether petitioner obtained a final decision from the Council determining the permitted use for the land.").

[8] Palazzolo, 533 U.S. at 621 (*citing* Del Monte Dunes, 526 U.S. 687, 698 (1999)).

application to develop is futile, the matter is deemed ripe for review.[9]

The City's assertion that the Landowner's inverse condemnation case is not ripe, because there was a finding in the PJR case that no major modification has been filed is incredibly misleading. First, the Landowner properly pled AND submitted documentary evidence that after the evidence closed in the PJR case (June 21, 2017), the Landowner submitted two applications that met all of the standards and procedures for a major modification, and the City still denied both applications. *(1 OMS 027-028, 6 OMS 1264; see also 5 OMS 1075-1122, 4 OMS 671-798)*. The City Attorney himself acknowledged this, stating, "Let me state something for the record **just to make sure we're absolutely accurate on this**. **There was a request for a major modification that accompanied the development agreement [MDA]**, **that**

[9] St. v. 8th Judicial Dist., 351 P.3d 736, 742 (Nev. 2015). For example, in Del Monte Dunes, 526 U.S. 687, 698-699 (1999) "[a]fter five years, five formal decisions, and 19 different site plans, [internal citation omitted] Del Monte Dunes decided the city would not permit development of the property under any circumstances...After reviewing at some length the history of attempts to develop the property, the court found that to require additional proposals would implicate the concerns about repetitive and unfair procedures expressed in MacDonald, Commer & Frates v. Yolo County, 477 U.S. 340, 350 n. 7, (1986) [*citing* Stevens concurring in judgment from Williamson Planning Comm'n v. Hamilton Bank, 473 U.S. 172 at 205-206, 105 S.Ct. 3108 at 3126 (1985)] and that the city's decision was sufficiently final to render Del Monte Dunes' claim ripe for review." The "Ripeness Doctrine does not require a landowner to submit applications for their own sake. Petitioner is required to explore development opportunities on his upland parcel only if there is uncertainty as to the land's permitted uses." Palazzolo, at 622.

was voted down by Council. So that the modification, major mod was also voted down." (*6 OMS 1264:2353-2361*).

Second, the Landowner pled AND submitted documentary evidence in this inverse condemnation proceeding that the 35 Acre Property has always been designated "residential" under the Peccole Concept Plan touted by the City, therefore, there is nothing to "modify." (*6 OMS 1290*). In this connection, the Landowner showed in this inverse condemnation case that over 1,000 units have been built inside the Peccole Concept Plan contrary to the original 1986 land use designations and not once did the City require a "major modification" application. *(6 OMS 1274)*. Third, the Landowner properly pled AND submitted documentary evidence that it would be futile to seek any further applications to develop as the City has denied every single application to use the 35 Acre Property, for any purpose. *(1 OMS 049-051)*. As explained, almost all of these City denial actions occurred after the June 21, 2017 PJR cut off date. Therefore, these actions were not permitted to be considered in the PJR case, showing why it is error to apply any decision in the PJR case to determine ripeness in this inverse condemnation case.

THE CITY'S CITATION TO THE PJR ORDER IS MISPLACED.

The City also claims Judge Williams' finding in the PJR proceeding that the Landowner did not have the vested right to have his land use application approved

is dispositive of the Landowner's claims in this inverse condemnation proceeding. Pet. 7-9. This argument fails for the same reasons set forth above - government discretion to deny a land use application in a PJR proceeding does not deprive a landowner of vested property rights and is not a defense to a taking in an inverse condemnation proceeding. Moreover, as explained, the PJR proceeding merely addressed the very narrow issue of the City's discretion to deny one land use application to develop the 35 Acre Property and the record was statutorily limited to June 21, 2017. Here, as explained, the Landowner alleges that the denial of a singular application to develop the 35 Acre Property, ***along with the aggregate of 10 other City actions thereafter*** (after June 21, 2017), results in a taking of the Landowner's 35 Acre Property. *1 OMS 001-038; 2 PA0316-PA0331.* Accordingly, any finding in the PJR case is not dispositive of the taking claims in this inverse condemnation proceeding.

THE CITY'S "CHILL" ARGUMENT IS WITHOUT MERIT.

The City asserts that its ability to decide land use applications has been "chilled" by Judge Williams' denial of its motion for judgment on the pleadings, because prior to Judge Williams' order "discretionary decisions were plainly protected from inverse condemnation claims." (Pet. 14). First, as explained in detail above, this is a false statement of the law. Second, Judge Williams changed nothing -

he merely followed well-settled inverse condemnation law. And, this "chilling" argument was more fully addressed and rejected in "Real Party in Interest, 180 Land Co., LLC's Response to 'Notice' that Emergency Stay Relief Needed by May 24, 2019," filed with this Court on May 23, 2019.

THE CITY'S JUDICIAL ECONOMY ARGUMENT IS WITHOUT MERIT.

The City's judicial economy argument is also without merit (Pet. 15) as intervention requires this Court to sit in place of the trial court, before a final decision by the trial court, and determine: 1) the Landowner's property interest; 2) the ripeness issue; and, 3) the taking issue. Clearly these are fact based issues that should be deferred to the lower court so the issues can be fully and fairly litigated. If this Court intervenes now, it will be the initial fact finder, requiring this Court to review in detail the Landowner's opposition to the City's motion for judgment on the pleadings, which is 75 pages and includes over 100 exhibits. *See 2 PA0273 - PA0361.*

THE CITY'S CLAIMS ABOUT THE FIRST AMENDED COMPLAINT ARE A SMOKE SCREEN AND FALSE.

The City claims that the Landowner's First Amended Complaint Pursuant to Court Order Entered on February 2, 2018 For Severed Alternative Verified Claims in Inverse Condemnation ("FAC") "only challenged the City Council's June 21, 2017, Decision to deny the Developer's 35 Acre Applications." (Pet. 9). First, this demonstrates a fundamental misunderstanding of inverse condemnation law. A claim

in inverse condemnation does not necessarily "challenge" a Government action; it simply alleges the action amounted to a taking. The City is, again, attempting to improperly conflate the PJR claim, which does "challenge" the City's June 21, 2017 denial, with the Landowner's inverse condemnation claims which do not "challenge" the City's multiple actions, but, instead, allege the same amount to a taking for which just compensation is owed.

Second, to the extent the City claims the factual allegations in the FAC only address the June 21, 2017 denial, this is false. The FAC also alleges the City's August 2, 2017 denial of the MDA as another taking action by the City. (*PA0035 at ¶ 36, PA0036 at ¶ 36, PA0037 at ¶ 39, PA 0039 at ¶ 59-60, and PA0040 at ¶ 69-71*). The allegations regarding the MDA are important as the City Council claimed it was only denying the Landowner's June 21, 2017 application because the City wanted the 35 Acre Property developed as part of the MDA, but then on August 2, 2017, the City denied the MDA (even though the City requested and wrote the MDA). Id. This further shows the City had reached a final decision that it would not allow any development on the 35 Acre Property. Id. Accordingly, it is false to assert the Landowner's FAC "only challenged the City Council's June 21, 2017 Decision."

Moreover, the City's entire argument regarding the FAC is a smoke screen, as the Landowner was granted leave to amend and supplement his complaint (*PA0879-*

880) to add additional City actions in support of his inverse condemnation claims, as set forth above. *(1 OMS 001-038*, specifically, *009-026)*. This leave to amend was proper as leave is freely given when justice so requires, absent undue delay, bad faith or dilatory motive on the part of the movant. NRCP 15(a)(2); Adamson v. Bowker, 85 Nev. 115, 121 (1969); Stephens v. Southern Nev. Music Co., 89 Nev. 104 (1973). Yet, according to the City, if it files a motion for judgment on the pleadings, any right to amend is lost (even where discovery has not commenced). Pet. 9. There is no place for this argument as it would forever alter NRCP 15 by eliminating amendments.

THIS COURT DID NOT MISAPPREHEND WHICH COMPLAINT WAS OPERATIVE.

This Court did not misapprehend which complaint was operative as the City asserts. (Pet. 9). Instead, the City is arguing that the Landowner should be the only Nevada litigant that cannot amend and supplement his complaint prior to discovery even commencing. While the FAC sufficiently alleges facts which (when accepted as true with all inferences drawn in the Landowner's favor[10]) establish a taking, the

[10] Sadler v. PacifiCare, 130 Nev. 990, 993-994, 340 P.3d 1264 (2014); *citing* Buzz Stew v. City of N. Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008) (setting forth the standard of review for an order dismissing a complaint under NRCP 12(b)(5)); *see also* Bernard v. Rockhill Dev. Co., 103 Nev. 132, 135, 734 P.2d 1238, 1241 (1987) (explaining that a "motion for a judgment on the pleadings has utility only when all material allegations of fact are admitted in the pleadings and only questions of law remain").

Landowner still was granted leave to amend / supplement his complaint to add additional facts further establishing the taking of the 35 Acre Property. *(1 OMS 01)*. There is no rule prohibiting this amendment/supplement (prior to discovery even commencing).

The City next claims that Judge Williams did not rule on the Landowner's motion to amend until it ruled on the City's motion for judgment on the pleadings. (Pet. 9, fn. 1). This is both irrelevant and untrue. Judge Williams heard both motions on the same day, but the granting of the Landowner's motion to amend is first in time in the order, accordingly, the Court granted the Landowner's motion to amend prior to denying the City's motion for judgment on the pleadings. (*5 PA00879-880*).[11]

THE CITY'S CLAIM SPLITTING ARGUMENT IS BASELESS.

The City's claim splitting argument is completely baseless as it focuses on the City's action and not on the property taken by the City action (*e.g.* - the car wreck and not the five different people hurt in the car). In essence, the City asserts that all litigants that assert certain City actions are a taking must bring all lawsuits in one case, even though those actions may impact different parcels of property owned by

[11] To the extent the City is arguing that Judge Williams orally stated his denial of the City's motion for judgment on the pleadings one second before stating that he was granting the Landowner's motion to amend, this would be an unworkable standard that the City should not even advance.

different entities. This is nonsensical.

The cases of Sisolak, *supra,* and Hsu v. Clark County, 123 Nev. 625 (2007) both involved the exact same Clark County action (the adoption of height restriction ordinance 1221), but the cases were brought separately because inverse condemnation cases are property specific - *In rem* actions.[12] Accordingly, Mr. Sisolak, whose property was near Las Vegas Blvd and Arby, brought his own case separate from Mr. Hsu, who owned property near Tropicana and Paradise (as did all other landowners impacted by the height restriction). This was not claim splitting as the City advances just because the same taking facts applied to each parcel of land. The complete fallacy in the City's argument is further evidenced by the fact that there is no way Mr. Sisolak's case could have recovered damages for Mr. Hsu's property.

This is why there are four separate inverse condemnation actions currently pending in four Eighth Judicial District departments - 17 Acre Property (Judge Bixler), 35 Acre Property (Judge Williams - the pending case), 65 Acre Property (vacant Department VIII), and 133 Acre Property (Judge Sturman).[13] The litigation

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[12] Alper v. Clark County, 93 Nev. 569, 574 (1977)(Inverse condemnation proceedings are the constitutional equivalent to direct condemnation proceedings); U.S. v. Petty Motor Co., 327 U.S. 372, 376 (1946)("Condemnation proceedings are in rem...")

[13] As the different parcels of property are owned by different entities and have different parcel numbers, it required the filing of separate cases. The City filed motions to dismiss the 17 Acre, 133 Acre, and 35 Acre cases. All were

currently pending in the 17, 65, and 133 Acre cases cannot recover damages for the 35 Acre Property at issue here. To be very clear, the only case wherein the City's liability (and the resulting damages) for the taking of the Landowner's 35 Acre Property is pending is in this case. Accordingly, the City's claim splitting argument is baseless.

CONCLUSION

For these reasons, this Panel properly denied the City's Writ Petition.

Dated this 17th day of July, 2019.

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denied by three different district court judges.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6), because it has been prepared in a proportionally spaced typeface using Word Perfect in 14-point font, Times Roman style. I further certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 4,657 Words.

Pursuant to NRAP 28.2, I certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 17th day of July, 2019

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 17th day of July, 2019, a copy of the foregoing **OPPOSITION TO PETITION FOR REHEARING** was electronically filed with the Clerk of Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). Participation in the case who are registered with E-Flex as users will be served by E-Flex system and others not registered will be served via U.S. mail as follows:

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